



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *P. R. v Minister of Employment and Social Development*, 2020 SST 470

Tribunal File Number: AD-20-566

BETWEEN:

P. R.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: June 4, 2020

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] P. R. (Claimant) came to Canada as an adult. He worked in physically demanding jobs. The Claimant injured his finger at work. This resulted in a significant infection and hospitalization. He also has a number of other medical conditions, including a heart condition, a subarachnoid hemorrhage, gastroesophageal reflux disease, gallstones, peripheral vascular disease, irritable bowel syndrome, diabetes mellitus, chronic renal failure, hearing loss, diabetic neuropathy, as well as depression and non-restorative sleep resulting in fatigue, exhaustion and cognitive impairments.

[3] The Claimant applied for a Canada Pension Plan disability pension and claimed that he was disabled by these conditions. The Minister of Employment and Social Development refused the application. The Claimant appealed this decision to the Tribunal. The Tribunal's General Division dismissed the appeal. It decided that the Claimant did not have a severe disability before the end of the minimum qualifying period (MQP – the date by which a claimant must be found to be disabled to receive the disability pension).

[4] Leave to appeal this decision to the Tribunal's Appeal Division was granted because the General Division may have made an error in law by failing to consider all of the Claimant's medical conditions. I have read all of the documents filed with the Tribunal and the General Division decision. I have listened to the parties' submissions and the recording of the General Division decision. The General Division made no error in law. Therefore, the appeal is dismissed.

ISSUES

[5] Did the General Division make at least one of the following errors in law?

- a) It failed to consider all of the Claimant's conditions, or the totality of his conditions;

- b) It failed to consider the Claimant's personal characteristics, including his age and education; or
- c) It failed to consider the Claimant's attempts to perform alternate work.

ANALYSIS

An appeal to the Tribunal's Appeal Division is not a re-hearing of the original claim. Instead, I must decide whether the General Division:

- a) failed to provide a fair process;
- b) failed to decide an issue that it should have, or decided an issue that it should not have;
- c) made an error in law; or
- d) based its decision on an important factual error.¹

[6] The Claimant argues that the General Division made errors in law. His arguments are considered below.

The General Division considered the totality of the Claimant's conditions

[7] The Federal Court of Appeal states that when deciding whether a claimant is disabled, the decision maker must consider all of their conditions, and the totality of their conditions on the claimant's capacity regularly to pursue any substantially gainful occupation.² The Claimant says that the General Division failed to do this.

[8] However, the General Division decision states this legal proposition.³ It carefully considered all of the Claimant's conditions, including:

- stomach bloating⁴

¹This paraphrases the grounds of appeal set out in s. 58(1) of the DESD Act

² *Bungay v. Canada (Attorney General)*, 2011 FCA 47

³ General Division decision at para. 12

⁴ General Division decision at para. 8, 12, 16, 21

- sleep issues⁵
- difficulties with standing, walking, lifting⁶
- left foot numbness⁷
- Depression⁸
- heart condition⁹
- Diabetes and diabetic neuropathy¹⁰
- dizziness¹¹
- hearing loss¹²
- heart condition including valve replacement surgery¹³
- low back pain¹⁴
- finger injury at work followed by lengthy infection and hospitalization¹⁵

After considering all of these conditions, the General Division decision states that the Claimant recovered to the point that he exercised daily, could sit for two to three hours and slept through the night.¹⁶ The General Division concludes that although the Claimant experienced a number of medical issues, upon assessing the totality of the medical conditions, symptoms and impairments they do not result in an incapacity regularly to pursue any substantially gainful occupation.¹⁷

⁵ *Ibid.*

⁶ *Ibid.* at para. 9, 17

⁷ *Ibid.* at para. 12, 17, 19

⁸ *Ibid.* at para. 13, 26

⁹ *Ibid.* at para. 15

¹⁰ *Ibid.* at para. 18, 19

¹¹ *Ibid.* at para. 20

¹² *Ibid.* at para. 22

¹³ *Ibid.* at para. 23

¹⁴ *Ibid.* at para. 24

¹⁵ *Ibid.* at para. 25

¹⁶ *Ibid.* at para. 26

¹⁷ *Ibid.*

[9] This demonstrates that the General Division considered all of the Claimant's conditions, individually and the totality of the conditions on his capacity regularly to pursue any substantially gainful occupation. It made no error in law.

The General Division considered the Claimant's personal characteristics

[10] The Federal Court of Appeal also states that a decision maker must consider a claimant's personal characteristics, including age, education, language skills, and work and life experience to decide whether they are disabled.¹⁸ The Claimant argues that the General Division failed to do so.

[11] However, the General Division decision states that the Claimant was 56 years old at the end of the MQP,¹⁹ he spoke English when he came to Canada,²⁰ he worked in a variety of physically demanding jobs,²¹ he was capable of physical activity with restrictions,²² and he could learn new skills within limitations.²³ The decision contains evidentiary bases for these findings of fact.

[12] Therefore, the General Division considered the Claimant's personal characteristics. It made no error in law in this regard.

The General Division did not consider efforts to try alternate work

[13] Finally, the Federal Court of Appeal states that where there is evidence of work capacity, a claimant must demonstrate that they could not obtain or maintain employment because of their health.²⁴ The General Division decision does not refer to this legal principle. But, the Claimant made no attempts to return to work after his injury. Thus, there was no evidence upon which the General Division could analyze this principle. The General Division cannot be faulted for failing to do something that it could not. It made no error in this regard.

¹⁸ *Villani v. Canada (Attorney General)*, 2001 FCA 248

¹⁹ General Division decision at para. 30

²⁰ *Ibid.* at para. 2

²¹ *Ibid.*

²² *Ibid.* at para. 30

²³ *Ibid.*

²⁴ *Inclima v. Canada (Attorney General)*, 2003 FCA 117

CONCLUSION

[14] The appeal is dismissed for these reasons.

Valerie Hazlett Parker
Member, Appeal Division

HEARD ON:	May 28, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	Bozena Kordasiewicz, Counsel for the Appellant Sandra Doucette, Counsel for the Respondent